

8. COASTAL ZONE MANAGEMENT AND SPECIAL AQUATIC SITES

Factor 8 requires that any activity that affects state waters must be subject to review for determination of consistency with approved Coastal Zone Management Plans. The general permit for the eastern Gulf of Mexico covers areas in Federal waters only. However, this chapter reviews the plans for Alabama, Florida, and Mississippi state waters due to the proximity of the coverage area to waters covered by the state Coastal Zone Management Plans.

8.1 Requirements of the Coastal Zone Management Act

The Coastal Zone Management Act requires that any Federally-licensed or permitted activity affecting the coastal zone of a state that has an approved coastal zone management program (CZMP) be reviewed by that state for consistency with the state's program (16 USC 1456(c)(A) Subpart D). Under the Act, applicants for Federal licenses and permits must submit a certification that the proposed activity complies with the state's approved CZMP and will be conducted in a manner consistent with the CZMP. The state then has the responsibility to either concur with or object to the consistency determination under the procedures set forth by the Act and their approved plan. For NPDES program general permits, the EPA is considered the applicant and must submit the general permit and consistency determination to the affected states for concurrence.

Consistency certifications are required to include the following information (15 CFR 930.58):

- A detailed description of the proposed activity and its associated facilities, including maps, diagrams, and other technical data;
- A brief assessment relating the probable coastal zone effects of the proposal and its associated facilities to relevant elements of the CZMP;
- A brief set of findings indicating that the proposed activity, its associated facilities, and their effects are consistent with relevant provisions of the CZMP; and
- Any other information required by the state.

Discharges covered by this OCS general permit will occur in Federal waters outside the boundaries of the coastal zones of the States of Alabama, Florida, and Mississippi. However, because these discharges could occur in close proximity to state waters, creating the potential for impacts on state waters, consistency determinations for the general permit will be prepared and submitted to the States of Alabama, Florida, and Mississippi. The following summaries provide an understanding of the requirements of each state's management plan for consistency determination.

8.2 Alabama Coastal Area Management Program

8.2.1 Understanding of Program Requirements

Alabama Coastal Area Board (CAB) was given authority in 1976 to develop and implement the Alabama Coastal Area Management Program (ACAMP). In 1982, the CAB was abolished and the responsibilities of carrying out the ACAMP was divided between the Alabama Department of Environmental Management (ADEM), which is responsible for all coastal area permit, regulation, and enforcement functions and the Alabama Department of Economic and Community Affairs (ADECA), Office of State Planning and Federal Programs, which is responsible for all other functions.

The program, approved in September, 1979, is a "tool for the protection and enhancement of Alabama's Coastal Area land and water resources." The document entitled *Alabama Coastal Area Management Program - Amendment II* was used to prepare the following understanding of the requirements of the program. (A revised plan has been drafted, but is not yet approved.)

The goals and policies of ACAMP are designed to meet the following seven objectives:

- Improve management capabilities in the coastal area
- Add specificity and predictability to the review for compliance with the management program
- Increase the States ability to develop methods to solve problems within the coastal area
- Continue to clarify the permitting process by interaction with the public and improving the awareness of ADEM's permit procedures and by improving interagency coordination
- Provide the necessary scientific data to determine "present levels" which is the basis for a number of ACAMP's regulations
- Provide for adequate consideration of the national interest
- Assure continued consistency with the Program of all Federal and State actions in the coastal zone through a review of Federal and State actions that affect the coastal areas

Uses determined by the Department to have a degrading affect on the coastal area shall not be permitted unless there is a compelling public interest. In this case these uses shall, to the maximum extent practicable, minimize degradation of the coastal area. The following factors will be considered when determining if the importance of the public interest is on balance with the ability to meet ADEM's rules:

- Significant national interest such as energy facilities or uses to improve water quality, air quality, or wetlands
- Enhancement or protection of geographic areas of particular concern and areas for preservation and restoration, such as construction or improvement of facilities in Port of Mobile
- Significant economic benefit for the coastal area
- Water dependency

- Other similar factors.

If ADEM finds that an imminent peril to the public health and safety or welfare requires immediate action, ADEM may approve proposed emergency actions without prior notice or hearing. The procedure may be effective no longer than 120 days.

Major projects that may have direct and significant impacts shall show, to the satisfaction of the ADEM, the potential impacts of the proposed activities on the following coastal and natural resources. The relevant resource protection policies, operational rules and regulations, and action items identified for coastal and natural resources are presented below.

Coastal Resource Protection Policies

Mineral Resource Exploration and Extraction

It is the policy of the Management Program to encourage the extraction of mineral resources in coastal Alabama consistent with the water quality policies and natural resource policies of the Plan.

Commercial Fishing

To encourage and promote the commercial fishing industry in coastal Alabama, it is the policy of the Plan to maintain conditions that support present populations, and where feasible, to enhance marine species and to encourage conservation practices favoring increases of marine and estuarine species which will increase the potential yield of Alabama's coastal fisheries.

Coastal Resource Protection Operational Rules and Regulations

The Alabama Coastal Area Management Program requires compliance with Federal and state statutes and regulations that relate to the development and preservation of resources within the coastal area. In order to be deemed consistent with the Program, activities must comply with the relevant substantive requirements of the following Federal and state statutes and any regulations adopted pursuant to these statutes to the extent applicable under the terms of those statutes or regulations. Only those statutes and regulations deemed relevant to the general permit are listed here.

- Rivers and Harbors Act of 1899, as amended
- Federal Water Pollution Control Act, as amended
- Clean Air Act
- Marine Mammals Protection Act of 1972, as amended
- Endangered Species Act of 1972 1973, as amended
- National Historic Preservation Act of 1966, as amended
- National Environmental Policy Act of 1969, as amended

- Outer Continental Shelf Lands Act, as amended

- Solid Wastes Disposal Act, Code of Alabama 1975, §§ 22-27-2 to 22-27-7, as amended
- Alabama Water Pollution Control Act, Code of Alabama 1975, §§ 22-22-1 to 22-22-14, as amended
- Alabama Air Pollution Control Act of 1971, Code of Alabama 1975, §§ 22-28-1 to 22-28-23, as amended
- Code of Alabama 1975, §§ 9-11-1 to 9-11-398, as amended (fish, game and wildlife)
- Code of Alabama 1975, §§ 9-12-1 to 9-12-184, as amended (marine resources)

Natural Resource Protection Policies

Water Quality

Alabama's policy is to maintain coastal waters at a quality which will support present levels of estuarine organisms, plants and animals, and, where feasible, to enhance and restore water quality to support optimum levels of estuarine organisms, plants, and animals.

Air Quality

Air quality shall be maintained at a level which supports the health and well-being of Alabama's citizens and, where feasible, to enhance air quality.

Wetlands and Submersed Grassbeds

The quality and quantity of coastal wetlands and submersed grassbeds shall be maintained at the level necessary to provide for present levels of habitat for both terrestrial and aquatic life to play their pivotal role in the aquatic food web and to provide natural control for shoreline erosion and, where practicable, to enhance the quality and quantity of these wetlands and submersed grassbeds.

Beach and Dune Protection

Recognizing the natural value of beaches and dunes for erosion control, wildlife habitat, and recreational opportunities, it is Alabama's policy to maintain the natural integrity of the beach and dune systems and to restore and enhance these resources where feasible.

Wildlife Habitat Protection

It is the policy of Alabama to maintain areas of wildlife habitat sufficient to support present levels of terrestrial and aquatic life, including fish and shellfish, and to preserve endangered species of plants and animals and, where feasible, to provide for optimum levels of terrestrial and aquatic life.

Biological Resources

It is Alabama's biological productivity policy to maintain present levels of plants and animals within coastal Alabama; to enhance, where feasible, biological productivity; and to monitor directly these levels through regular sampling.

Cultural Resource Protection

Because of the unique and representative archaeological and historic sites in coastal Alabama and their educational and cultural values, it is the policy of Alabama to support preservation and protection of Alabama's cultural resources.

Endangered Species

It is the policy of the Program to promote and encourage the preservation of the critical habitat of recognized endangered species.

Natural Resource Protection Operational Rules and Regulations

The specific rules and regulations for natural resources are in the same statutes and regulations as described for the coastal resource protection operational rules and regulations in Section 8.2.3, above.

8.2.2 Assessment of Consistency

Chapter 11 of this document addresses many of the concerns of Alabama's policies, rules, and regulations for protection of coastal and natural resources, commercial and recreational fisheries, endangered species, and the potential impacts on these resources given the permitted discharges. Many of the statutes and regulations listed under the Program as necessary for consistency are also required by the NPDES program for permit issuance. The Federal Water Pollution Control Act, as amended, gives EPA the authority to implement the NPDES program. The Endangered Species Act requires consultation with the U.S. Fish and Wildlife Service and National Marine Fisheries Service to certify that the permit will comply with the goals of the Act. The National Environmental Policy Act requires that EPA prepare an environmental impact statement for the permit coverage area. This requirement has been satisfied by a separate Environmental Impact Statement prepared by EPA Region 4. This document also addresses the Clean Air Act requirements for offshore activities. The Outer Continental Shelf Lands Act governs the leasing of mineral rights and the exploration and production activities undertaken in U.S. waters. That Act gives states authority to enact regulations that protect their coast and water resources and those requirements are met during the leasing process and during approval of plans of exploration or production. The Rivers and Harbors Act is concerned with navigation of the nation's waters and the Marine Mammals Protection Act concerns takings of marine mammals. They are not pertinent to this permit.

Although the permit covers waters that are under Federal jurisdiction, the Region has taken state statutes into consideration. The Alabama Water Pollution Control Act also is addressed in Chapter 9 of this document. The pollutant levels in the permitted discharges are compared to state water quality

standards to determine compliance. The Solid Waste Disposal Act is not within the jurisdiction of this NPDES permit. However, wastes hauled to shore will be governed by state regulations implementing that Act.

8.3 Florida Coastal Management Program

8.3.1 Understanding of Program Requirements

The Florida Coastal Management Program (FCMP) was formally submitted and approved in 1981. Actions of ten state agencies and five water management districts are coordinated under the plan. The Department of Community Affairs is the lead agency. Their document *1997 Revision, Florida Coastal Plan Guide* (Florida DCA, 1997) was used to prepare the following understanding.

Table 8-1 provides a listing and brief description of the Florida statutes that are potentially relevant for a consistency determination for the general permit. The statutes that are applicable are summarized below.

Summary of Potentially Applicable Statutes

State and Regional Planning

The Conceptual State Lands Management Plan establishes policies governing all lands under the ownership and control of the Board of Trustees of the Internal Improvement Trust Fund. This Board consists of the Governor and Cabinet acting for the general public good to acquire, manage, conserve, protect, and dispose of all state lands to assure maximum benefit and use. State lands include lands under navigable (fresh and salt) waters, which Florida gained title to upon statehood. The Conceptual State Lands Management Plan also governs the management of sovereignty submerged lands. The Division of State Lands will review the consistency statement with regard to the following elements of the Plan that are relevant to activities covered under the proposed general permit.

- 1) Location, evaluation, and protection of archaeological and historical resources
- 2) Water resources:
 - a) maximum protection for the waters of the state, especially those used for public drinking water supplies, shellfish harvesting, public recreation, fish and wildlife propagation and management
 - b) compliance with state water quality standards and their intent

Table 8-1. Florida Statutes to be Addressed Under CZM Review

Statute	Applicability and Requirements
Beach and Shore Preservation	Not Applicable (N/A) - Coastal construction projects.
State and Regional Planning	Statewide resource planning; must address potential for conflict with State Comprehensive Plan (including water resources, coastal and marine resources, air quality, and hazardous and nonhazardous materials and waste.
State Lands	N/A - Covers all state-owned lands including uses, leasing, dredging, etc.
State Parks and Preserves	Protects state parks and submerged lands with exceptional biological, aesthetic and scientific value.
Saltwater Fisheries	Covers fisheries management; must address potential impacts on areas of importance to fisheries, endangered species or critical habitats; currents and larval transport; eggs and larvae; and bottom habitat characteristics.
Wildlife	N/A - Management of freshwater and upland wildlife and aquatic life.
Water Resources	N/A - Withdrawal, diversion, and consumption of water.
Outdoor Recreation and Conservation	N/A - Purchase and management of recreational lands.
Pollution Discharge Prevention and Removal	N/A - Storage, transportation, and clean ups of pollutants.
Energy Resources	Covers all phases of oil and gas exploration, drilling, and production.
Land and Water Management	N/A - Covers land and water management policies which guide development decisions.
Environmental Control	Regulates pollution releases and implements standards for pollution.
Soil and Water Conservation	N/A - Erosion control.

Additional enforceable policies of the FCMP that were deemed not applicable to this permitting activity are County and Municipal Planning and Land Development Regulation; Emergency Management; Land Acquisitions for Conservation or Recreation; Recreational Trails System; Archives, History, and Records Management; Commercial Development and Capital Improvements; Transportation Administration and Finance; Public Health, General Provisions; and Mosquito Control.

- 3) Fish and wildlife resources:
 - a) maintenance of natural diversity of habitats and balanced fish and wildlife populations
 - b) protection of threatened and endangered species habitats

- 4) Submerged grass beds and other benthic communities:
 - a) encourage the identification of and an evaluation of submerged grass beds and other benthic communities in state ownership
 - b) control the use of submerged lands to maintain essentially natural conditions and protect the values and functions of submerged grass beds and other benthic communities
 - c) prohibit development activities that adversely effect significant beds of submerged grasses and other benthic communities, unless the development is to be of overriding public importance with no reasonable alternatives, and adequate mitigation measures are included
- 5) Mineral resources:
 - a) encourage detailed inventories and evaluation of state-owned mineral resources
 - b) control management activities on state-owned land that would preclude or seriously impair the ability to extract significant mineral resources
 - c) allow extraction of state-owned mineral resources in environmentally sensitive areas only upon demonstration that the extraction is of overriding public importance, that all reasonable steps will be taken to minimize adverse environmental impacts, and that there are no reasonable alternatives
- 6) Unique natural features (such as coral reefs and exceptional vegetation and habitat areas);
- 7) Submerged lands:
 - a) all submerged lands shall be considered single-use lands and shall be managed primarily for the maintenance of essentially natural conditions, the propagation of fish and wildlife and public recreation, including hunting and fishing where deemed appropriate by the managing agency
 - b) issue oil, gas, and other petroleum drilling leases only when the proposed lease area is at least one mile seaward of the outer coastline of Florida, upon adequate demonstration that the proposed activity is in the public interest, that the effect upon aquatic resources has been thoroughly considered, and that every effort has been made to minimize potential adverse effects on sport and commercial fishing, navigation, and national security.

State Parks and Aquatic Preserves

The Florida Aquatic Preserves Act limits or conditions certain activities within aquatic preserves. Regulated activities include the drilling for gas and oil. The Division of State Lands will review the consistency statement with regard to the following directives that are relevant to activities covered under the proposed general permit:

- 1) Discourage all activities that adversely impact significant benthic communities
- 2) Limit use of and protect aquatic preserves.

Saltwater Fisheries

The Florida Department of Environmental Protection and Marine Fisheries Commission are charged with the following goals under Chapter 370, F.S.:

- 1) To preserve, manage, and protect marine, crustacean, shell, and anadromous fishery resources in state waters
- 2) To protect and enhance the marine and estuarine environment
- 3) To protect marine and estuarine water quality
- 4) To protect threatened and endangered species.

For the review of the consistency statement, the following issues will be assessed by the DEP.

- 1) Potential impact upon areas of unique importance to Florida's recreational or commercial fisheries or concentrations of endangered or threatened species; proximity to major areas of critical habitat which would affect other protected species, or plants and animals of economic importance
- 2) Potential impact upon currents and larval transport and the related impact on recruitment to nearshore nursery areas
- 3) Potential impact on the survival of eggs and larvae in the area for important species which are subject to minimum catch sizes
- 4) Enforceability of any law, rule, or regulation impacting Florida's marine resources
- 5) Cumulative impacts of the proposed activities.

Energy Resources

The Division of Resource Management within the DEP regulates all phases of exploration, drilling, and production of oil, gas, and other petroleum products within the state of Florida. The Division issues permits for all activities associated with oil and gas exploration, development, and production based on consideration of compliance with statutory provisions; protection of submerged lands and wildlife preserves; and potential impacts as weighed against risks for each phase of drilling or production activities.

Environmental Control

The DEP controls pollution of the air and waters of the state and protects their quality for beneficial uses. All discharges into surface waters of the state are covered by the Department's permitting processes and standards. In evaluating the consistency statement, the Department will consider the following.

- 1) Conservation and protection of environmentally sensitive living resource systems
- 2) Conservation and protection of lands and waters specially designated under state and Federal law
- 3) Protection of surface water quality and quantity
- 4) Protection of recreational benefits
- 5) Minimization of adverse hydrographic and hydrogeologic impacts
- 6) Induced or secondary impacts on area natural resources
- 7) Solid, sanitary, and hazardous waste disposal

8.3.3 Assessment of Consistency

This document addresses concerns related to water and wetland resources, fish and wildlife resources, commercial and recreational fisheries, socioeconomic impacts, water quality standards, and

nonwater-quality impacts. Conclusions concerning potential impacts from activities under the general permit are presented in Chapter 11 of this document. Specific concerns of FCMP that are not discussed in that chapter are addressed below.

There are no state parks or aquatic preserves within the coverage area of the proposed permit. Protection of any such areas, for example areas under moratoria, would occur at the time of leasing the mineral rights. The general permit does not decide where drilling or production can occur; that is the responsibility of MMS and the State of Florida. If areas in or near parks or preserves were to be leased for activity, EPA can require that the operator apply for an individual permit so that more stringent conditions may be explored (see Part I.A.2 of the permit). This permit provision also hold true for any area that the Region feels warrants extra protection or reconsideration of the permit conditions.

Facilities in compliance with the NPDES general permit will meet requirements of demonstration of the ability to prevent, control, and abate pollution discharges. Further, a spill prevention plan is not under the jurisdiction of the EPA and discharges in compliance with NPDES permits are not subject to the Oil Spill requirements of Section 311 of the Clean Water Act. However, because of the potential effects from a large spill, Region 4 has included a reference to compliance with the Oil Spill Requirements of the Clean Water Act in the proposed permit.

In conclusion, compliance with the conditions and limitations of the proposed permit will ensure consistency with the Coastal Management Plan of Florida. The permit limitations, conditions, and monitoring will provide sufficient protection for Florida's natural resources.

8.4 Mississippi Coastal Program

8.4.1 Understanding of Program Requirements

The Mississippi Coastal Program was approved by the Associate Administrator, Office of Coastal Zone Management, under provisions of Coastal Zone Management Act on September 30, 1980 and became effective October 1, 1980. The document entitled *Mississippi Coastal Program*, prepared by the Bureau of Marine Resources of the Mississippi Department of Wildlife Conservation, was used to prepare the following understanding of the requirements of the Mississippi Coastal Zone Management Plan.

The Mississippi Commission on Wildlife Conservation (MCWC) was created by legislation in 1978 to implement the Mississippi Coastal Program. The MCWC carries out its responsibilities through the Bureau of Marine Resources of the Mississippi Department of Wildlife Conservation. The Coastal Program Advisory Committee also was established to participate in implementation of the Coastal Program. The committee participates in permit reconsiderations and acts as an advisor to the Governor.

The ten goals of the Mississippi Coastal Program designed to promote decisions that balance development with the environment are the following.

- To provide for reasonable industrial expansion in the coastal area and to insure the efficient utilization of waterfront industrial sites so that suitable sites are conserved for water dependent industry.
- To favor the preservation of the coastal wetlands and ecosystems, except where a specific alteration of a specific coastal wetlands would serve a higher public interest in compliance with the public purposes of the public trust in which the coastal wetlands are held.
- To protect, propagate, and conserve the state's seafood and revitalization of the seafood industry of the State of Mississippi.
- To conserve the air and waters of the state, and to protect, maintain, and improve the water quality thereof for public use, for the propagation of wildlife, fish and aquatic life, and for domestic, agricultural, industrial, recreational, and other legitimate beneficial uses.
- To put to the beneficial use, to the fullest extent of which they are capable, the water resources of the state, and to prevent the waste, unreasonable use, or unreasonable method of use of water.
- To preserve the state's historical and archaeological resources, to prevent their destruction, and to enhance these resources wherever possible.
- To encourage the preservation of natural scenic qualities in the coastal area.
- To consider the national interest involved in planning for and in the siting of facilities and services in a manner consistent with the coastal program.
- To assist local governments in the provision of the public facilities and services in a manner consistent with the coastal program.
- To insure the effective, coordinated implementation of public policy in the coastal area of Mississippi comprised of Hancock, Harrison, and Jackson counties.

Coastal management consistency determination requirements are determined for coastal uses and activities based on their effect on water quality, water quantity, bottom disturbances, water pollution, sedimentation (runoff), shoreline erosion, marine aquatic life, and historical and archaeological sites. Oil and gas activities regulated under NPDES (section 402) permits are subject to management by the Mississippi Coastal Program under two sets of guidelines: wetlands management and policy coordination. Oil and gas exploration and production activities are subject to the decision-making criteria of the wetlands management guidelines and section 402 permits are subject to review under policy coordination guidelines.

Summary of Applicable Management Guidelines

Wetlands Management Guidelines

The following guidelines under the wetlands management plan shall be met for oil and gas exploration activities that may cause displacement of coastal waters, artificially alter water levels or currents, or kill or materially damage the flora and fauna of coastal wetlands. The proposed permit being considered for consistency covers only offshore leases; therefore, only those guidelines deemed applicable to offshore activities are included here.

The wetlands management guidelines require that the Bureau of Marine resources review the proposed action for consistency with respect to the following aspects of the Coastal Program.

- Existing navigable waters shall be used for access to oil and gas extraction sites in preference to new dredging.
- Environmentally sensitive areas including oyster reefs, submerged grass beds, and other productive shallow water areas shall be avoided when siting extraction facilities. Also, directional drilling should be employed when the shorelines of barrier islands or beaches, small fishing banks, hard banks or reefs would otherwise be disturbed.
- No discharge into coastal waters of cuttings, drilling fluids, produced waters, sanitary wastes, contaminated deck drainage, or any other materials that are associated with oil and gas operations, in the coastal waters of Mississippi, except for noncontact cooling waters when permitted for discharge under the NPDES program shall be allowed.
- To maintain the integrity of small fishing banks (generally 500 acres or less) and their accessibility to sport and commercial fishermen, no structures shall be placed either temporarily or permanently on the top of these banks.
- For exploration and production activities in close proximity to oyster reefs, seagrass beds, fishing areas or hard banks containing reef building organisms the following shall be observed:
 - Uncontaminated drill cuttings shall be shunted away from sensitive areas and discharged at or near the bottom, or shall be transported to shore or to less sensitive offshore locations. Usually shunting is only effective when the point of shunted discharging can be replaced deeper than the area of the bank being protected.
 - Drilling and production structures, and oil pipelines shall not be placed within one mile of the bases of live reefs.
- All facilities, obstructions, or debris, which could impair recreational or commercial fishing shall be removed or terminated beneath the water bottom. Whenever this is not practicable, they shall be marked by a lighted buoy to prevent fouling of fishing gear.

-
- All pipelines placed in coastal wetlands shall be buried.

Policy Coordination Guidelines

The policy coordination guidelines require that the Bureau of Marine Resources coordinate the consistency review by Coastal Program agencies with respect to the following aspects of the Coastal Program.

- Wetlands protection (Mississippi Code Section 49-27-3)
- Effective utilization of waterfront sites (Mississippi Code Section 57-15-6(1)(a))
- Seafood conservation (Mississippi Code Section 49-15-1)
- Preservation of natural scenic qualities (Mississippi Code Section 57-15-6(1)(d))
- Natural interest

The State's A-95 notification system will be used for policy coordination between state offices under the Coastal Program. The Bureau of Pollution Control is responsible for reviewing the proposed action with respect to preserving air and water quality (Mississippi Code Section 49-17-3). The Department of Archives and History reviews and comments on the proposed actions for their potential impact on historical or archaeological resources (Mississippi Code 51-3-1).

8.4.3 Assessment of Consistency

The Wetlands Management Guidelines are mainly concerned with the placing of structures and pipelines. These concerns are addressed by MMS in lease stipulations or Army Corp. of Engineers dredge permits and are not covered under the NPDES program. The one guideline that does affect the NPDES general permit is that no discharge of cuttings, drilling fluids, produced waters, sanitary wastes, and contaminated deck drainage shall be discharged into coastal waters. The general permit does not permit discharges to state waters, and therefore, is in compliance with this guideline.

The Policy Coordination Guidelines protect the wetlands, waterfront sites, seafood, natural scenic qualities, and natural interests of publicly owned lands within the state's jurisdiction. Although the general permit covers only Federal waters, the conclusions concerning potential effects, as presented in Chapter 11 of this document, demonstrate that the permit is consistent with the policy guidelines of Mississippi.